

Remarks

Claims 1, 9, 17, 26, 29 and 31 have been amended. Claims 27, 28 and 33 have been canceled without disclaimer or prejudice, and with the understanding that the subject matter encompassed by the canceled claims may be pursued in a continuation or divisional application. New claim 34 has been added. The amendment to claim 1 deletes subject matter that is recited by new claim 34. The amendments to claims 9 and 26 delete the modifier “advanced” in describing the recited Ziegler-Natta catalyst. The amendments to claims 17, 26, 29 and 31 simply relate to formatting issues. New claim 34 finds exemplary support in originally filed claim 1. No new matter has been added by any of the amendments or by new claim 34.

1. Response to Restriction Requirement

Applicants’ undersigned affirms that pursuant to Applicants’ instructions, the invention of Group I (claims 1-32), as set forth by the Examiner, was elected with traverse in a February 23, 2005 teleconference with the Examiner. Non-elected claim 33 has been cancelled in this response without prejudice or disclaimer and with the understanding that Applicants may pursue the non-elected subject matter in a divisional application.

2. Objection to the Drawings

The Examiner has objected to Figures 3, 5, 9, 13-15, 17, 19 and 20 because the photocopy reductions of these figures are deemed to be unclear. The Examiner offers recommendations regarding how the clarity of the figures may be improved.

Applicants submit herewith replacement drawings for all of the figures (1A to 20), which incorporate the Examiner’s suggestions for distinguishing the data symbols contained in each of these figures and for optimizing the photographs and bar charts encompassed by the figures. In light of this submission of replacement drawings, Applicants respectfully request that the Examiner withdraw this objection.

3. Rejection under 35 U.S.C. § 112, second paragraph

- a) **location of anti-skid additive**

Claims 2 and 25-29 are rejected as being unclear as to which layer of the three or more layers is the at least one layer containing the anti-skid additive. The Examiner suggests that by common definition, an anti-skid layer prevents surface skid or slip and therefore should be the outermost layer.

Applicants respectfully disagree with the Examiner's basis for the rejection of claims 2 and 25-29. The particle size and other physicochemical properties of the anti-skid additive are selected based on the layer in which the additive is located, and are selected to allow the elastomeric film of the present invention to remain stretchable without being susceptible to the formation of micro-perforations, lensing or tearing. The Examiner is correct that by definition an anti-skid layer prevents surface skid or slip. However, it is not necessary for the anti-skid additive of Applicants' invention to be present in the outermost layer of the elastomeric film for the additive to exert its effects. The anti-skid additive may be present in any layer of the film, provided that it results in an anti-skid property on the exterior surface of the film. A person of ordinary skill in this art would understand this concept. Applicants therefore submit that to limit the claims to include an anti-skid additive in the outermost layer would unduly limit the scope of protection to which Applicants are entitled. Withdrawal of this rejection is respectfully requested.

b) "advanced" Ziegler-Natta catalyst

Claim 26 is rejected because the Examiner asserts that it is unclear from the specification how an "advanced" Ziegler-Natta catalyst may be distinguished from a common Ziegler-Natta catalyst.

Applicants have deleted from claims 9 and 26 the term "advanced" in describing the recited Ziegler-Natta catalyst, thus rendering the Examiner's rejection moot.

c) polyolefin plastomers

Claim 28 is rejected because the Examiner asserts that it is unclear from the specification as to the composition of the first polyolefin plastomer or the second polyolefin plastomer.

Applicants have canceled claim 28 without prejudice, thus rendering moot the Examiner's rejection of this claim.

4, Rejection under 35 U.S.C. § 103(a)

a) Lefebvre in view of Hanson and Miller as evidenced by Miyashita

Claims 1-6, 11, 12, 14, 15, 20-22 and 24 are rejected over U.S. Patent 5,732,745 to Lefebvre *et al.* ("Lefebvre") in view of U.S. Patent 3,283,992 to Hanson *et al.* ("Hanson") and U.S. Patent 3,981,820 to

Miller *et al.* ("Miller"), as evidenced by U.S. Patent 5,236,483 to Miyashita *et al.* ("Miyashita"). According to the Examiner, Lefebvre teaches an elastomeric film comprising at least one layer but fails to teach elastomeric layers comprising anti-skid additives. The Examiner relies on Hanson for teaching that it is well known in the art to add anti-skid additives to plastic materials. According to the Examiner, Hanson fails to teach that the anti-skid additive is particulate or has a melt temperature greater than 500°C. The Examiner relies on Miller for allegedly teaching Applicants' claimed particle size and Miyashita for teaching Applicants' claimed melt temperature. Thus, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to have used a silica anti-skid additive, as taught by Miller, to the outer surface layer of the film packaging of Lefebvre, in view of Hanson, to maintain the anti-skid function provided by the silica due to its high temperature stability during processing.

Applicants respectfully disagree with the Examiner's assessment of the applicability of the combination of the above-cited references to Applicants' claimed invention. As stated in the Summary of the Invention section, Lefebvre describes a thermoplastic tube for the storage of bales of agricultural products (*e.g.*, hay or straw) and, more generally, a plastic film with good slip properties (see column 1, line 65 to column 2, line 7). Further, the Lefebvre specification states that "The plastic tube according to the invention is further characterized by good slip and anti-blocking properties. Good slip properties, *i.e.*, the ability of the film to slide smoothly and quickly over other surfaces, facilitate the insertion of bales into the tube and reduce the risk of an accidental tearing by stalks, snags and the like extending from the bales. These properties are achieved by incorporating into the resin composition slip agents compatible therewith ..." (column 4, lines 50-58). Thus, Lefebvre actually teaches away from the use of anti-skid additives because the inclusion of such additives would prove disadvantageous in the performance of the described articles. As such, there is certainly no motivation for a person of ordinary skill in this art to combine Lefebvre with the teaching of Hanson, which describes the addition of anti-skid compounds to plastic bags to prevent the slippage of the bags when they are stacked upon themselves. In addition, there is no teaching or suggestion in Lefebvre that the stacking of the thermoplastic tubes upon themselves even occurs or is a concern such that the addition of an anti-skid additive would prove advantageous. Neither Miller nor Miyashita can remedy the defects present in Lefebvre or Hanson that prevent these references, either alone or in combination, from rendering obvious Applicants' claimed invention.

b) Lefebvre in view of Miller and Miyashita and further in view of Erderly

Claims 7-10 are rejected over Lefebvre in view of Miller and Miyashita and further in view of U.S. Patent 5,451,450 to Erderly *et al.* ("Erderly"). According to the Examiner, Lefebvre in view of Miller and Miyashita fails to teach a polyolefin plastomer having a density of 0.910 g/cm³ or lower. The Examiner relies on Erderly for allegedly teaching such a polyolefin plastomer with this density and asserts that it would have been obvious to one of ordinary skill in the art to have added a polyolefin plastomer to the elastomeric film of Lefebvre in view of Miller and Miyashita.

Applicants respectfully disagree with the Examiner's rejection of Applicants' claims 7-10 over the above-cited combination of references for at least two reasons.

For one, the Examiner has omitted Hanson from her rejection of Applicants' claim 1 as being rendered obvious over the combination of Lefebvre and Hanson and Miller and Miyashita. Because claims 7-10 depend from claim 1 and therefore incorporate each and every recited feature of claim 1, Applicants believe that to be consistent the Examiner would have to also include Hanson in her rejection of claims 7-10. Otherwise, the Examiner's use of Hanson for allegedly teaching the use of anti-skid additives in plastic materials is lost. Therefore, as the rejection currently stands, the Examiner is missing an element in her analysis of Applicants' claims.

As a second reason, Applicants believe that even if the Examiner adds Hanson to create a combination of references that allegedly renders claims 7-10 obvious, there would have been no motivation, as discussed above in section a), to combine Hanson (or Miller for that matter) with Lefebvre, which actually teaches away from the use of anti-skid additives. Erderly cannot remedy the deficiencies present in Lefebvre, Hanson, Miller or Miyashita. Therefore, for at least these two reasons, Applicants request that this rejection be withdrawn.

c) Lefebvre in view of Miller and Miyashita and further in view of Falla

Claims 16-19 are rejected over Lefebvre in view of Miller and Miyashita and further in view of U.S. Patent 5,879,768 to Falla *et al.* ("Falla"). According to the Examiner, Lefebvre in view of Miller and Miyashita fails to teach 5 to 100% of low density polyethylene having a density between 0.910 and 0.930 g/cm³. The Examiner relies on Falla for allegedly teaching 0-90% of a low density polyethylene with a density range of 0.916 to 0.930 g/cm³ and asserts that it would have been obvious to one of ordinary skill in the art to have added a low density polyethylene having such a density range to the elastomeric film of Lefebvre in view of Miller and Miyashita.

Applicants respectfully disagree with the Examiner's rejection of Applicants' claims 16-19 over the above-cited combination of references for at least the two reasons discussed in section b) above, namely that (1) Hanson has been omitted as a reference in the Examiner's combination of references used to reject claims 16-19, which depend from claim 1, and (2) that Falla cannot remedy the deficiencies present in Lefebvre, Hanson, Miller or Miyashita regarding motivation to combine different technologies. For at least these reasons, Applicants request that this rejection be withdrawn.

d) Mandzsu in view of Karaiwa

Claims 1, 23 and 30 are rejected over U.S. Patent 6,444,080 to Mandzsu *et al.* ("Mandzsu") in view of U.S. Patent 6,706,385 to Karaiwa ("Karaiwa"). According to the Examiner, Mandzsu teaches a thermoplastic film roughened by polymer particles which prevent the film from skidding or slipping. The Examiner asserts that although Mandzsu does not teach that the described films are elastomeric, it would be well known to a person of ordinary skill in this art to use elastomeric films in packaging. The Examiner acknowledges that Mandzsu fails to teach Applicants' claimed amounts and melt temperatures for the anti-skid additives, but relies on Karaiwa for allegedly teaching an ultrahigh molecular weight polyethylene.

Applicants respectfully disagree with the Examiner's assessment of the applicability of the combination of the above-cited references to Applicants' claimed invention. Mandzsu teaches that one of the advantages of the invention is to maintain the same chemical composition for the anti-skid additive as for the article in which the additive is incorporated. "The invention is based on the recognition that if particles consisting of the substance of the film and/or other plastic material being able to weld together with that, and having suitable size are brought to the melted film, then the temperature of the particles at their sides looking on the film surface will increase and also themselves will be melted at least partly and will be strongly welded together with the film. Standing out of the surface at least partly, these particles make the surface rough." (see column 3, lines 28-36). Thus, the particles of the anti-skid additive, being composed of the same non-elastomeric material as the article into which the particles are added, affix themselves into the article through partial melting and resolidification. Clearly then, the teaching in Mandzsu cannot be applied to Applicants' claimed invention because the anti-skid additives in Applicants' invention either don't melt or melt above 500°C, which is greater than the melting point of the elastomeric films. Therefore, the anti-skid additives in Applicants' claimed invention could not be composed of the same elastomeric materials as the films themselves. Karaiwa does nothing to remedy this deficiency present in Mandzsu. Applicants therefore request that this rejection be withdrawn.

e) Mandzsu in view of Karaiwa and further in view of Erickson

Claims 31 and 32 are rejected over Mandzsu in view of Karaiwa and further in view of U.S. Patent 4,954,124 to Erickson *et al.* ("Erickson"). The Examiner acknowledges that neither Mandzsu nor Karaiwa teach the details of a gusseted film and relies on Erickson for allegedly teaching the same.

Applicants respectfully disagree with the Examiner's use of the combination of the three above-cited references to render Applicants' claims 31 and 32 obvious at least for the reasons discussed in section d) above regarding the lack of motivation to combine Mandzsu and Karaiwa. Erickson does not remedy this deficiency. As such, Applicants request that this rejection be withdrawn.

f) Anthony in view of Hanson and Miller as evidenced by Miyashita

Claims 1, 25 and 29 are rejected over U.S. Patent 4,399,173 to Anthony *et al.* ("Anthony") in view of Hanson and Miller as evidenced by Miyashita. According to the Examiner, Anthony teaches a film consisting of three layers, wherein the relative thicknesses and compositions of the layers are allegedly described and within Applicants' claimed ranges. The Examiner acknowledges that Anthony does not teach or suggest the use of anti-skid additives in the layers and relies on Hanson for allegedly teaching the same. Miller and Miyashita are employed by the Examiner for teaching the size and melt temperature of the anti-skid additives, respectively.

Applicants respectfully disagree with the Examiner's assessment of the applicability of the combination of the above-cited references to Applicants' claimed invention. Anthony is directed to the use of low pressure linear low density polyethylenes for reducing melt fracture events. In describing the disadvantages of melt fracture, Anthony states that melt fracture "is observed as a surface roughness [which] can also adversely affect the physical properties of the film" (column 1, lines 59-64). Further, in describing a preferred film composition, Anthony states that "the film composition containing the high melt index, low pressure, low density polyethylene in the two outer layers has a smooth and glossy surface" (column 6, lines 9-12). Anthony therefore actually teaches away from the use of anti-skid additives because Anthony is focused on a film's "smooth and glossy surface" that is the result of using low pressure linear low density polyethylenes. Clearly, there is no motivation to combine Anthony with Hanson, which teaches that bags with smooth surfaces have low coefficients of friction that cause them to slip when stacked and that a roughening of the surface is necessary to prevent said slippage. Neither Miller nor Miyashita, either alone or combination, can remedy these deficiencies. Applicants therefore request that this rejection be withdrawn.

5. **Allowable claims**

Applicants note that claim 27 has been deemed allowable by the Examiner if rewritten to overcome the rejection under 35 U.S.C. § 112, second paragraph and to include the limitation of the base claim and all intervening claims.

6. **Conclusion**

Upon consideration of the foregoing, it will be recognized that Applicants have fully and appropriately responded to all of the Examiner's rejections. Accordingly, all claims are believed to be in proper form in all respects and a favorable action on the merits is respectfully requested. Should the Examiner feel that there are any issues outstanding after consideration of this amendment, the Examiner is invited to contact Applicants' undersigned representative to expedite prosecution.

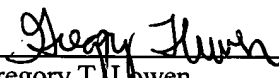
Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or to credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **constructive petition for extension of time** in accordance with 37 C.F.R. 1.136(a)(3).

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